

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Inc. for Interim)	
Declaratory Ruling and Limited Waivers)	WC Docket No. 08-152
Regarding Access Charges and the "ESP)	
Exemption")	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

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I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² submits these preliminary comments in the above-captioned proceeding.³

A. SUMMARY

On July 17, 2008, AT&T Inc. ("AT&T") filed the above-captioned petition with the FCC seeking a declaratory ruling, "on an *interim* basis, pending comprehensive reform," that:

¹ / "Petition of AT&T for Interim Declaratory Ruling and Limited Waivers, Pleading Cycle Established," FCC Public Notice, DA 08-1725, July 24, 2008.

² / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

³ / As is discussed herein, Rate Counsel recommends that the Commission modify the pleading cycle.

- **Interstate terminating access charges** apply (i) to “interstate” interexchange IP-to-PSTN traffic that is delivered by a telecommunications carrier to a LEC for termination on the PSTN and (ii) to “interstate” interexchange PSTN-to-IP traffic that is delivered by a telecommunications carrier to a LEC for termination to an IP-based provider (and/or its customers) served by the LEC.

- The assessment of **intrastate terminating access charges** (i) on “intrastate” interexchange IP-to-PSTN traffic that is delivered by a telecommunications carrier to a LEC for termination on the PSTN and (ii) on “intrastate” interexchange PSTN-to-IP traffic that is delivered by a telecommunications carrier to a LEC for termination to an IP-based provider (and/or its customers) served by the LEC, does not conflict with federal policy (including the ESP Exemption) where the LEC’s intrastate terminating per-minute access rates are *equal to or less than* its interstate terminating per-minute access rates.

- **Reciprocal compensation arrangements** apply to the transport and termination of IP/PSTN traffic that is not access traffic (i.e., traffic that is “local”), when such traffic is exchanged between a LEC and another telecommunications carrier.

AT&T seeks immediate clarification regarding the proper terminating charges for Internet protocol to public switched telephone network (“IP-to-PSTN”) traffic and PSTN-to-IP traffic, and also seeks to eliminate the disparity between its interstate and intrastate terminating switched access rates.⁴ Among other things, AT&T requests a waiver of the Commission’s rules to enable it to offset foregone revenues (from reducing its intrastate

⁴ / Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, July 17, 2008 (“Petition”), at 4. On July 17, 2008, AT&T also submitted two letters. In one letter, AT&T urges the Commission to “act decisively to unify terminating intercarrier rates for all carriers” and by so doing to eliminate the arbitrage opportunities that the existing intercarrier compensation system has created. Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T to Chairman Kevin Martin, July 17, 2008, re Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Intercarrier Compensation for ISP-Bound Traffic, WC Docket No. 99-68; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; IP-Enabled Services, WC Docket No. 04-36. In a separate letter, AT&T seeks the Commission’s formal extension of the preemption set forth in the Vonage Order to fixed-location VoIP services, and recommends that the Commission authorize states to assess state universal service fund contribution requirements on VoIP services “provided that those contributions do not burden the federal contribution mechanism.” Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T to Chairman Kevin Martin, July 17, 2008, re In the Matter of IP-Enabled Services, WC Docket No. 04-36; Universal Service Contribution Methodology, WC Docket No. 06-122; Federal-State Joint Board on Universal Service, CC Docket No. 96-45. Rate Counsel certainly supports the Commission’s efforts to unify intercarrier compensation rates, and, by so doing, to minimize arbitrage opportunities. Rate Counsel opposes the Commission’s preemption of states’ regulation of fixed-location VoIP, and welcomes the opportunity to address this matter in any investigation in which the Commission considers this issue.

terminating access charges) by increasing its subscriber line charge (“SLC”) above the level permitted by the *CALLS Order*,⁵ and to increase the interstate originating switched access component of its Average Traffic Sensitive (“ATS”) rate above the level permitted by the *CALLS Order* up to a level that would yield an ATS rate of no higher than \$0.0095.⁶ Rate Counsel submits that the FCC should dismiss the Petition or in the alternative, the FCC should require AT&T to supplement the Petition with additional data and support, and the FCC should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking.

II. DISCUSSION

A. **The FCC should dismiss the Petition because the issue of access charges on VoIP is presently before the FCC for decision in IP-Enabled Services proceeding, WC Docket No. 04-36, the Petition is not complete as filed, and AT&T has failed to exhaust other administrative remedies**

Rate Counsel submits that the Petition should be dismissed on three grounds. First, the subject matter of the Petition is currently before the FCC in the IP-Enabled Services proceeding pending FCC’s final action and therefore, the Petition is seeking duplicative relief.⁷ AT&T fully participated in the other proceeding and duplicate proceedings are not in the public interest or an effective use of administrative resources. Rate Counsel continues to support the establishment of a rational intercarrier compensation regime, including the payment of access charges by all

⁵ / *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”). The *CALLS Order* adopted an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service. Interstate Access charges were reduced and subscriber line rates were increased and capped which brought lower rates for consumers.

⁶ / *Id.*, at 47. The \$0.0095 ATS rate corresponds with the rate permitted under the *CALLS Order* for low-density price cap carriers. Under the *CALLS Order*, an ATS rate of \$0.0055 applies to the Bell operating company local exchange carriers.

⁷ / See, Rate Counsel’s comments in the IP-Enabled Services Proceeding; accord Rate Counsel comments in WC Docket No. 05-276, dated December 7, 2006 (stating, among other things, “When voice calls are handled over the ‘traditional’ interexchange carrier network or using IP technology, they should be assessed comparable access charges, consistent with the existing access charge framework, and, in the future, according to the unified intercarrier compensation regime presently under consideration by the FCC in Docket 01-92).

carriers regardless of the underlying technology that they use. This issue should be addressed, however, in a single proceeding rather than in a piecemeal fashion.

Second, AT&T's Petition is incomplete as filed. The FCC has imposed "complete when filed" requirements when there is a short time to act.⁸ AT&T is requesting action in part as a way to resolve ISP-bound compensation rules before November 5, 2008.⁹ However, numerous deficiencies exist with the Petition including but not limited to:

- The Petition lacks necessary supporting data and documentation necessary to file comments;
- The Petition fails to identify the states where intrastate access charges exceed interstate access charges;
- The Petition fails to identify, on a state-specific basis, the volume of traffic that would be affected by its proposed rate reduction;
- The Petition fails to quantify the new revenues that would result from imposing access charges on VoIP traffic;
- The Petition fails to identify the states in which it proposes to raise the SLC, the proposed rate increase, and the quantity of customers that would be affected;

^{8/} See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB re. Mar. 23, 2001); see *SWBT/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

^{9/} See *Core Communications, Inc.* No. 07-1446, 2008 WL 264936 (D.C. Cir July 8, 2008) wherein the Court issued a Mandamus Order requiring the FCC to explain the legal basis for interim intercarrier compensation rules that exclude ISP-bound traffic from the reciprocal compensation requirements of Section 251(b)(5) in a final order, no later than November 5, 2008. Absent an order by November 5, 2008, the rules are vacated.

- The Petition fails to identify the IP providers that are failing to pay access charges;¹⁰
- The Petition fails to identify the states in which IP providers are failing to pay access charges;
- The Petition fails to quantify on a state-specific basis, the volume of minutes that the Petition would affect; and
- The Petition fails to provide recent and trend data about the total volume of traffic that the Petition would affect.

AT&T simply fails to provide the data necessary to enable meaningful analysis of and comment on its Petition. As a result, the Petition is incomplete as filed, warranting dismissal.

Finally, AT&T's Petition should be dismissed because it has neglected to exhaust administrative remedies by failing to seek relief under Section 208. AT&T has not demonstrated that the Section 208 complaint process is an inadequate remedy for the harms regarding the payment of access charges on VoIP traffic and improper arbitrage which underlie its request for a declaratory ruling in this matter. In view of the foregoing, the FCC should exercise its discretion and dismiss the Petition.

B. If the Petition is not dismissed, the FCC should require AT&T to supplement the Petition with additional data and support, and the FCC should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking.

AT&T's Petition would modify the existing interstate access charge plan,¹¹ submitted nine years ago by the Coalition for Affordable Local and Long Distance Services ("CALLS").¹²

¹⁰ / See, e.g., AT&T Petition at 7 and 41, discussing these CLECs in general terms.

¹¹ / See, e.g., AT&T's request to the Commission to waive its rules to enable AT&T to raise the SLC and to raise the interstate originating access charge; AT&T Petition at 42-43, 47.

¹² / Access Charge Reform, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("CALLS Order").

That Plan was developed through a full rulemaking process and yet, through its Petition, AT&T seeks to abridge the notice and comment period for proposed modifications to the Plan. The original CALLS proposal, which was presented as a “comprehensive solution to the membership’s access charges,” was subject to a notice of proposed rulemaking, with an original 44-day initial comment period and a 21-day reply comment period.¹³ The subsequently modified CALLS proposal was subject to 22-day initial comment period and then 14-day reply comment period.¹⁴ With the changes to the Plan sought by AT&T, such changes should be noticed by publication in the *Federal Register*, so that all interested parties are afforded the opportunity to comment.

The Commission’s abbreviated comment cycle would thwart its ability to render sound policy decisions in this complex matter. The issues raised by AT&T’s Petition are of great public importance. AT&T proposes to utilize the *interstate* SLC as a way to recover foregone *intrastate* access revenues: transforming the SLC from its original purpose of recovering the interstate portion of the fixed loop cost into a revenue recovery mechanism for foregone intrastate revenues. This would represent a fundamental departure from the FCC’s jurisdictional separations rules and from the FCC’s *CALLS Order*. AT&T’s proposal to raise the interstate originating switched access charge is a modification to the *CALLS Order*, and will impact the rates consumer are charged. Such changes should not be done absent rulemaking.

Furthermore, in the days following the Commission’s release on July 24, 2008, of its public notice seeking comment on the AT&T Petition, Embarq submitted a separate, but related

¹³ / *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Notice of Proposed Rulemaking*, rel. September 15, 1999, 14 FCC Rcd 16872.

¹⁴ / “Coalition for Affordable Local and Long Distance Services (CALLS) Modified Proposal, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45,” DA 00-533, March 8, 2000.

petition.¹⁵ In recognition of the public importance of this proceeding and the potential impact on consumers, three separate motions have been submitted seeking extensions of time and to consolidate this proceeding with the Embarq proceeding:

- Motion of the National Association of Regulatory Utility Commissioners for Extension of Time, August 8, 2008 (seeking extension of time for filing initial and reply comments to August 28, 2008, and September 11, 2008, respectively and stating that “the FCC’s proposed action, insofar as it directly affects end user rate structures/fees accessed for basic service, and has some preemptive elements, clearly impact upon” regulators’ “obligation to assure that such telecommunications services and facilities as may be required by the public convenience and necessity are universally provided at rates that are just and reasonable”);
- Motion for Consolidation of Proceedings and Extension of Filing Deadline, The Independent Telephone & Telecommunications Alliance, National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, August 8, 2008 (seeking consolidation of the Embarq¹⁶ and AT&T proceedings, and extension of time for filing initial and reply comments to August 26, 2008 and September 5, 2008, respectively, and stating, “[c]onsolidation of the proceedings with synchronized extended filing deadlines for comments and reply comments will enable the Commission and interested parties to address efficiently and rationally the common issues of the petitions”); and
- Motion for Extension of Time, COMPTTEL, August 6, 2008 (seeking extension of time for filing initial and reply comments to August 28, 2008, and September 8, 2008, respectively and stating that “[w]hile AT&T has characterized the petition as a request for interim action, resolution of the petition will likely have a long term impact on critical aspects of intercarrier compensation reform”).

As NARUC aptly observes, AT&T’s Petition, if granted, would affect directly regulators’ obligation to ensure that intrastate rates are just and reasonable. As the three motions indicate,

¹⁵ / Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, Docket No. 08-160, August 1, 2008 (“Embarq Petition”).

¹⁶ / Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, Docket No. 08-160. On August 5, 2008, the Commission issued PN DA-08-1846 establishing the pleading cycle for the Embarq petition, with initial and reply comments due August 26, 2008 and September 5, 2008, respectively.

AT&T's Petition also raises larger issues that affect the Commission's efforts to reform intercarrier compensation. If changes to the rules adopted in the *CALLS Order* are to be considered, the FCC should proceed by issuance of a notice of proposed rulemaking so that full public participation is possible. The Petition seeks to modify the *CALLS Order* and therefore such action requires a notice of proposed rulemaking. In addition, the FCC should require AT&T to supplement its filing as discussed above at pages 4-5 as part of any rulemaking. Without additional data and support, Rate Counsel can not analyze whether the proposal furthers consumers' interest, promotes competition and otherwise promotes the public interest. Without additional data and information, Rate Counsel is hindered in recommending other alternatives or otherwise offering meaningful comment whether the proposal will result in just and reasonable rates for consumers.

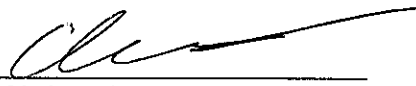
III. CONCLUSION

Rate Counsel recommends that the Commission dismiss AT&T's Petition. In the alternative, if the FCC is considering addressing access charges for VoIP traffic, addressing the IP/PSTN arbitrage problem, and making modifications to the *CALLS Order*, such changes should be undertaken by issuance of a further notice of proposed rulemaking with proper notice to the public, with directions to AT&T to supplement its Petition, and consideration of such supplemented Petition as part of the rulemaking.

Respectfully submitted,

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